

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAY 21 2013 ★

BROOKLYN OFFICE

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ALVARO MARIN and FERNANDO MARIN,
On behalf of themselves and others similarly
situated current and former manual laborers
employed by defendants,

Plaintiffs,

- against -

NOT FOR PUBLICATION
MEMORANDUM & ORDER
09-CV-01384 (CBA) (VVP)

JMP RESTORATION CORP.,
JMP MAINTENANCE CORP. and VICTOR
GONZALEZ,

Defendants.

-----X
AMON, Chief United States District Judge.

Plaintiffs in a collective action brought claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, and the New York Labor Law ("NYLL") against defendants for unpaid compensation and liquidated damages. On September 24, 2012, this Court granted partial summary judgment on the NYLL claims of four of the plaintiffs, Alvaro Marin, Fernando Marin, Tomas Rosas and Hugo Sanchez. (DE #66.) These four plaintiffs subsequently moved for (1) the entry of judgment against defendants for the amounts awarded for their NYLL claims pursuant to the Court's September 24, 2012 Order and the dismissal, without prejudice, of all remaining claims,¹ and (2) an award of attorney's fees. (DE #73, #74.) The Court referred these motions to Magistrate Judge Viktor V. Pohorelsky for report and recommendation.

On April 10, 2013, Magistrate Judge Pohorelsky issued a Report and Recommendation ("R&R") recommending that the Court: (1) enter final judgment in this action against defendants

¹ Although plaintiffs styled this motion as one for the entry of default judgment, as Magistrate Judge Pohorelsky points out, they are in reality seeking the entry of judgment against the defendant on their NYLL claims and the dismissal, without prejudice, of the remaining claims. The Court accordingly construes it as the latter.

and in favor of plaintiffs in the amounts awarded in the Court's September 24, 2012 Order; and (2) award attorney's fees in the amount of \$34,359 and costs in the amount of \$707.27.

Neither party has objected to the R&R. When deciding whether to adopt a R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted). The Court has reviewed the record and, finding no clear error, hereby adopts Magistrate Judge Pohorelsky's R&R as the opinion of the Court. Accordingly, the Court directs the Clerk of Court to enter final judgment against defendants and in favor of Alvaro Marin, Fernando Marin, Tomas Rosas and Hugo Sanchez for their NYLL claims as follows:

Alvaro Marin	\$3,876.88 ²
Fernando Marin	\$7,025.68
Tomas Rosas	\$2,080.00
Hugo Sanchez	\$2,080.00

The judgment should also contain an award of attorney's fees in the amount of \$34,359 and costs in the amount of \$707.27. All remaining claims are dismissed without prejudice. The Clerk of Court is then directed to terminate all pending motions and to close the case.

SO ORDERED.

Dated: Brooklyn, New York
May 21, 2013

s/Carol Bagley Amon

Carol Bagley Amon
Chief United States District Judge

² The Court notes a typographical error in the R&R in the amount of the judgment to be entered in favor of Alvaro Marin. The amount of the judgment is \$3,876.88 not \$3876.00.